

105TH CONGRESS  
1ST SESSION

# H. R. 478

To amend the Endangered Species Act of 1973 to improve the ability of individuals and local, State, and Federal agencies to comply with that Act in building, operating, maintaining, or repairing flood control projects, facilities, or structures.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 21, 1997

Mr. HERGER (for himself and Mr. POMBO) introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To amend the Endangered Species Act of 1973 to improve the ability of individuals and local, State, and Federal agencies to comply with that Act in building, operating, maintaining, or repairing flood control projects, facilities, or structures.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Flood Prevention and  
5 Family Protection Act of 1997”.

1 **SEC. 2. PURPOSE.**

2       The purpose of this Act is to improve the ability of  
 3 individuals and local, State, and Federal agencies to com-  
 4 ply with the Endangered Species Act of 1973 in building,  
 5 operating, maintaining, or repairing flood control projects,  
 6 facilities, or structures to address imminent threats to  
 7 public health or safety or catastrophic natural events or  
 8 to comply with Federal, State, or local public health or  
 9 safety requirements.

10 **SEC. 3. AMENDMENTS TO ENDANGERED SPECIES ACT OF**  
 11 **1973.**

12       (a) ACTIONS EXEMPT FROM CONSULTATION AND  
 13 CONFERENCING.—Section 7(a) of the Endangered Species  
 14 Act of 1973 (16 U.S.C. 1536(a)) is amended by adding  
 15 at the end the following new paragraph:

16       “(5) Consultation and conferencing under paragraphs  
 17 (2) and (4) is not required for any agency action that—

18               “(A) consists of building, operating, maintain-  
 19 ing, or repairing a Federal or non-Federal flood con-  
 20 trol project, facility, or structure—

21                       “(i) to address a critical, imminent threat  
 22 to public health or safety;

23                       “(ii) to address a catastrophic natural  
 24 event; or

25                       “(iii) to comply with Federal, State, or  
 26 local public health or safety requirements; or

1 “(B) consists of routine operation, mainte-  
2 nance, rehabilitation, repair, or replacement of a  
3 Federal or non-Federal flood control project, facility,  
4 or structure, including operation of a project or a fa-  
5 cility in accordance with a previously issued Federal  
6 license, permit, or other authorization.”.

7 (b) PERMITTING TAKINGS.—Section 9(a) of such Act  
8 (16 U.S.C. 1538(a)) is amended by adding at the end the  
9 following new paragraph:

10 “(3) For purposes of this subsection, an activity of  
11 a Federal or non-Federal person is not a taking of a spe-  
12 cies if the activity—

13 “(A) consists of building, operating, maintain-  
14 ing, or repairing a Federal or non-Federal flood con-  
15 trol project, facility, or structure—

16 “(i) to address a critical, imminent threat  
17 to public health or safety;

18 “(ii) to address a catastrophic natural  
19 event; or

20 “(iii) to comply with Federal, State, or  
21 local public health or safety requirements; or

22 “(B) consists of routine operation, mainte-  
23 nance, rehabilitation, repair, or replacement of a  
24 Federal or non-Federal flood control project, facility,  
25 or structure, including operation of a project or a fa-

- 1 cility in accordance with a previously issued Federal
- 2 license, permit, or other authorization.”.

